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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,610	06/15/2001	Peter M. Bergler	MS1-690US	8484
22801	7590	12/22/2004	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			SMITH, TRACI L	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/882,610

Applicant(s)

BERGLER ET AL.

Examiner

Traci L Smith

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to papers filed on June 15, 2001.
2. Claims 1-49 are pending
3. Claims 1-49 are rejected.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result

6. In the present case, simply identifying where the services are located and reciting that instructions are computer readable do does not confer technological subject matter.

7. Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-49 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6 023 766 Yamamura; "Software license control system and software license control equipment.

10. As to claims 1, 12, 16, 30, 35, 41, 43 and 49 Yamamura teaches

-receiving a license request from a client; **requesting to issue a license**

determining that the expiration date of a license previously issued to the client has expired.

Software execution license collation of license information

reissuing the license to the client if the license is available, the reissued license having a new expiration date; **transmitting issued or reissued information(C. 5 I. 23-27)**

-issuing a new license to the client if a new license is available and the license is not available, the new license having a new expiration date; and **updated new license**

information(C.9 I. 40-41)

-denying the client access to software resources if the license is not reissued and a new license is not issued. **Denying access to execution of software(C. 8 I. 13-15).**

11. As to claims 2, 19, 37, 42, and 47 Yamamura teaches issuing a new licenses to a client with an expired license and issuing a temporary license.(C. 6 I. 29-30).

12. As to claims 3, 20, 36 and 44-46 Yamamura teaches reissuing a license (c. 5 I. 43-45); issuing a new license(C. 9 I. 40-41) and allowing access when license is expired.(C. 8 I. 7-8).

13. As to claims 4 and 21 Yamamura teaches license request and reissuing a license(c. 6 l. 30-35); issuing a new license(C. 13. l. 38-41) and denying access when either is not issued(C. 8 l. 14-15)

14. As to claims 5-10, 13, 22-26, 31, 38-40, and 48 Yamamura teaches expiration dates and temporary periods(C. 5 l. 43-45). Although Yamamura doesn't explicitly teach specific number of days for the periods and conditions this information is considered non-functional descriptive data involved in the steps recited. The steps would be performed regardless of the time frame. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see in re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 44(Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ 2d 1031(Fed. Cir. 1994).

15. As to claims 11, 15, 27 and 32 Yamamura teaches a program on a CD-ROM.(C. 13 l. 55-56).

16. As to claims 14, 17 28 and 33 Yamamura teaches a resources over a server(C. 1 l. 24-26).

17. As to claims 18, 29 and 34 Yamamura teaches the request upon accessing server(C. 6 l 47-49 and Fig. 4 S1-S3).

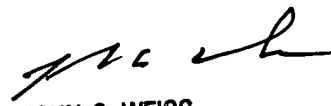
Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Foreign Patent JP 05346851 A Suzka, Software licensing system and reissue. Non-Patent Literature article from Proquest "Microsoft drops office concurrent licensing ; *InfoWorld* ; Nov. 10, 1997.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L Smith whose telephone number is (703)605-1155. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN G. WEISS
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